



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Variable Housing Allowance - Allowable Expenses
for Offset

File: B-228860, B-229281

Date: August 19, 1988

DIGEST

1. A service member married a woman who owned a house with a first and second mortgage on it, and it became their family residence. She had been previously married, and she had taken the second mortgage to pay her former husband an amount due him in their community property settlement whereby she retained the house after their divorce. The regulation defining monthly housing costs for purposes of computing a uniformed service member's variable housing allowance (VHA) excludes the cost of a second mortgage taken for other than repairing, renovating or enlarging a residence since VHA is an allowance to help a member pay for housing in a high-cost area, not to satisfy a community property settlement. Neither may the second mortgage in these circumstances be considered a mortgage taken for the initial purchase of a residence.

2. The definition of monthly housing costs for purposes of computing a variable housing allowance (VHA) may not include a cost for the interest or other return on investment a service member loses for the money he puts down upon purchasing his residence (a so-called "opportunity cost"). In promulgating the VHA regulations, the services chose not to include opportunity costs, and it was within their latitude under the law to do so.

DECISION

This case concerns two separate but related requests for advance decisions forwarded to us by the Per Diem, Travel and Transportation Allowance Committee regarding whether certain expenses may be included in the member's housing costs in computing variable housing allowances (VHA) authorized members of the uniformed services to help defray their

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housing costs in high cost areas in the United States.^{1/} The first case, submitted by the Marine Corps, asks whether the cost of a second mortgage for which the proceeds are used to satisfy a community property settlement may be included in computing a member's monthly housing cost. The second case, submitted by the Air Force, asks whether an "opportunity cost," that is loss of interest or other investment income for personal funds used in the downpayment on a house so as to reduce the amount of or render unnecessary a mortgage, may be included in a member's monthly housing cost. For the reasons explained below, neither the second mortgage taken to pay a community property settlement nor the opportunity cost is an expense applicable to determining a member's VHA.

BACKGROUND

Presently, VHA is authorized by 37 U.S.C. § 403a (Supp. III 1985). Pursuant to the authority granted by 37 U.S.C. § 403a(e), implementing regulations are prescribed in Volume 1 of the Joint Federal Travel Regulations (1 JFTR). Under section 403a(a)(1) of title 37, a member of a uniformed service who is entitled to a basic allowance for quarters (BAQ) is also entitled to a VHA if he or she is "assigned to duty in an area of the United States which is a high housing cost area with respect to that member." Subsection 403a(c)(1) prescribes the monthly amount of the VHA for a member with respect to an area as:

". . . the difference between (A) the median monthly cost of housing in that area for members of the uniformed services serving in the same pay grade and with the same dependency status as that member, and (B) 80 percent of the median monthly cost of housing in the United States for members of the uniformed services serving in the same pay grade and with the same dependency status as that member."

In late 1985 an amendment was made to the law to require that a member's monthly VHA be reduced by one-half of the amount, if any, by which the total of the member's prescribed VHA and BAQ exceeds the member's "monthly housing

^{1/} One case was submitted by the Disbursing Officer, Marine Corps Base, Camp Pendleton, California, and was assigned PDTATAC Control No. 87-16. The other case was submitted by the Director of Accounting and Finance, Headquarters Electronic Systems Division (AFSC), Hanscom Air Force Base, Massachusetts, and was assigned PDTATAC Control No. 87-20.

costs." 37 U.S.C. § 403a(c)(6)(A) as added by Public Law 99-145, § 602(c)(2), 99 Stat. 637 (Nov. 8, 1985). This was the first time that a member's personal and individual housing costs became directly relevant in determining his or her VHA; the greater the member's includable housing costs, the less of a reduction in VHA is required.

To implement this reduction provision, the term "monthly housing costs" had to be defined by the services since no definition was provided by the statute. Consequently, the regulations were amended so that for a member owning his or her home, the allowable housing expenses for purposes of the VHA offset were determined to be periodic mortgage payments, hazard and liability insurance, real estate taxes, and a standard utility maintenance expense. 1 JFTR, para. U8001-F. Furthermore, the regulations specify that allowable mortgage payments are limited to:

"1. mortgages used in connection with the initial purchase of a residence;

"2. mortgages used to refinance an existing mortgage which was used to purchase a residence (i.e., the existing mortgage is paid off with proceeds from the new mortgage) to the extent that the new mortgage payments do not exceed the old mortgage payment;

"3. real estate equity loans (e.g., a second mortgage) to the extent used to repair, renovate, or enlarge a residence (does not include loans used to furnish or decorate a home, or loans for personal reasons)"

QUESTIONS AND ANALYSIS

A. The Second Mortgage

In the Marine Corps submission, the military member concerned married a woman who had been divorced from her previous husband. Under her divorce decree, among other things, she retained the house she and her previous husband had owned but was required to pay her husband \$27,000 for his share of their community property, primarily the house. She assumed the first mortgage and then took a second mortgage to obtain the funds to pay her ex-husband the \$27,000. The member states that when he married his wife, he moved into the house and assumed the total of both mortgages as a responsibility of providing housing for his family.

Apparently, when the member originally applied for a VHA, he listed both mortgages as constituting housing expenses, and the computation of his VHA included these expenses from March 1 to September 10, 1986. Subsequently, he changed duty stations, and he was advised that the cost of his second mortgage was not a valid expense for purposes of a VHA. He was told that under the Joint Federal Travel Regulations, U8001-3, second mortgages are not allowable expenses unless they are used to repair, renovate, or enlarge a residence. The Marine Corps disbursing officer considered the second mortgage to have been obtained for personal reasons, to satisfy a court decree.

The member, however, suggests that the correct analysis is that both mortgages on the residence were used to purchase it since his wife assumed the first and took the second merely to obtain full ownership of the house.

In this situation the mortgage primarily was taken for the purpose of effecting a community property settlement, which later apparently resulted in providing the member and his family with a residence. Accordingly, we cannot agree with the service member that it was a mortgage "used in connection with the initial purchase of a residence," as provided in 1 JFTR, para. U8001-F-1. Neither does it fall within any of the other definitions in the regulations of allowable mortgages. Therefore, we agree with the Marine Corps that use of the expense of this second mortgage is not allowable, and recoupment action should be taken for the overpayment made to the member between March 1 and September 10, 1987.

B. The Opportunity Cost

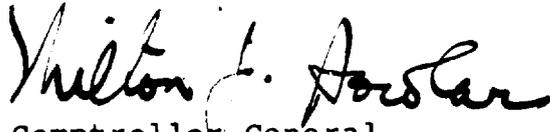
In the Air Force submission, a member who chose to pay cash when purchasing his home is seeking to have his so-called "opportunity cost" included as a housing expense. His opportunity cost is the interest or return on investment he loses each month on the money he paid for his house rather than take a mortgage and invest that money otherwise. As the submission points out, the method in which a member chooses to finance affects his housing costs and his rate of VHA. Thus, the member who puts down less money has a larger mortgage and more housing expenses resulting in less reduction in the VHA.

The Per Diem, Travel and Transportation Allowance Committee has commented on the issue in this matter. The Committee indicates that when the regulations were promulgated, including opportunity costs was considered. At that time the Committee decided to accept the recommendation of an advisory panel to not include an opportunity cost as a

housing expense. It was noted that there are many variations between full financing and no financing of a home, and decisions as to financing are personal ones dependent upon many factors peculiar to each case. Thus, including opportunity costs would present an "administrative nightmare."

In addition, we note that it cannot be stated unequivocally that merely because a member chooses to invest more money in a residence, he necessarily suffers a detriment or opportunity cost. It may well be that in certain instances over the long run, the member who chooses to put more money down on a residence will receive a greater return on his investment than the member who invested otherwise.

In any event we have recognized that the services have some administrative latitude in implementing the VHA statute. See B-224133, Dec. 22, 1987, 67 Comp. Gen. _____. They chose not to include opportunity costs as an includable housing expense, which was within their latitude to do. Accordingly, the Air Force member in the present case is not entitled to have those costs included in computing his VHA.

for 
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